

(Speaker Luedtke presiding)

SPEAKER LUEDTKE: Chair recognizes Senator Kelly, continuing debate on the.... Sorry to keep you all standing. I think I prefer to let Senator Kelly stand, and just let the rest of them sit down. Senator Kelly, proceed.

SENATOR KELLY: Mr. President, members of the Legislature. I particularly ask the attention of Senator Luedtke, DeCamp and Senator Frank Lewis. I am going back to the malpractice problem we had, and the discussions we had with the Attorney General in the Executive Board whereby "The Legislature has no attorney", we're all aware of that, but attorneys are for hire and the Legislature could hire one. But, as Senator Luedtke pointed out, there would be no advantage in the Executive Board moving because the Executive Board has no authority, it cannot substitute for the Legislature, and don't intermix the word Legislature and Legislative Council or Executive Board, they are entirely different. The Attorney General pointed out to the Executive Board, very plainly, that in these cases such as the nonimplementation of the malpractice bill, the Legislature has no standing in court whatsoever. The Legislature has no interest in that bill after it's been passed and come into law. I'm making these statements for corrections by the attorneys in the body, if there are corrections to be made. The Legislature has no standing in the court regarding nonimplementation of legislation. The members of the administration and the agency heads are part of the Executive Department of the Constitution. They have a constitutional right and a duty to follow the Constitution. They cannot follow the Constitution by implementing what they consider to be unconstitutional legislation. This, in their opinion, and their opinion would stand in court, they are not following the Constitution if they violate it by implementing unconstitutional legislation. Herein lies the dilemma that Senator Murphy has recognized, that when it is declared unconstitutional by the department head, by his actions of nonimplementation, absolutely nothing happens. The citizen can get his redress in court through mandamus. This has been unsatisfactory as we well know. We need this redress by government, by procedures that would be set forth in statute. When is the constitutional officer violating the Constitution? He is not violating the Constitution when he is doing it on a suspect. When that bill has been declared unconstitutional then he knows that he should not implement it, and he can only know that when it is so stated by the Nebraska Supreme Court. LB 45 immediately declares that when this question arises the Executive Department of government will move to get this question before the court for a definitive answer, to know whether they're violating the Constitution, or whether they are not. LB 45 sets it out very plainly for everybody to understand that a bill must be implemented by the Executive Branch of government unless they have it in court for a definitive answer on its constitutionality. When they have made that move, they are doing their utmost to determine what their responsibility is by taking the question to court, and they have fulfilled, in my opinion, what the people of Nebraska want, what LB 45 dictates that they do. From then on it is a court question as it should be. When the court says that it is unconstitutional,....

SPEAKER LUEDTKE: One minute, Senator Kelly.